



PATENT

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**In the United States Patent and Trademark Office**

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In re application of: Gourlay, et al.

Attorney Docket No.: CISC199/3486

Application No.: 10/034,368

Examiner: Joshua Joo

Filed: 12/19/2001

Group: 2154

Title: PATH SELECTION SYSTEM

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first-class mail on **December 4, 2006** in an envelope addressed to the AF, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450.

Signed: \_\_\_\_\_

Mary Deauclaure

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop: AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets.

Remarks begin on page 2 of this paper.

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# REMARKS

## REJECTION OF CLAIMS UNDER 35 USC §102

In the Office Action, the Examiner rejected the pending claims under 35 USC §102(e) as being anticipated by Aviani et al, U.S. Patent No. 6,798,125, ('Aviani' hereinafter). This rejection is respectfully traversed.

Aviani discloses a distributed network traffic load balancing technique implemented without a gateway router. See title. Aviani discloses an intercept server that intercepts packets routed to the host server. When desired, packets which are intercepted by the intercept server are replicated, encapsulated and tunneled to selected client servers. The tunneled packets are received and processed by each of the selected client servers, whereupon each of the selected client servers generates a respective spoofed response to the source device identified in the header of the originally intercepted packet. See Abstract.

Claim 1 recites, in part, a network device adapted for:

“sending a plurality of packets in response to receiving the service request, each of the plurality of packets identifying a different type of service via which to send the corresponding packet, wherein the type of service directly corresponds to a service provider; and

maintaining a mapping of each different type of service to an IP address, thereby enabling the service request to be processed via an IP address associated with a type of service identified in a first one of the plurality of packets to be received.”

Aviani neither discloses nor suggests a network device sending a plurality of packets, as claimed. More particularly, Aviani fails to disclose or suggest a single network device sending a plurality of packets in response to receiving a service request. In fact, the Examiner acknowledges that Aviani discloses a plurality of client servers each transmitting a single response. Thus, the Examiner admits that a single network device does not transmit all of the responses. Accordingly, Aviani neither discloses nor suggests a network device sending a plurality of packets in response to receiving the service request.

Aviani neither discloses nor suggests that each of the packets identify a different type of service via which to send the corresponding packet, where the type of service indicates a service provider. In fact, Aviani says nothing about service providers. The Examiner cites col. 8, lines 26-28 and col. 9, lines 30-41. Col. 8, lines 26-28 indicate that a DNS response includes an IP address associated with a client server. In addition, col. 9, lines 30-41 indicates that the name server will bind the IP address to the domain name corresponding to the host. However, these cited portions neither disclose or suggest that each of the packets identify a different type of service via which to send the corresponding packet, wherein the type of service directly corresponds to a service provider.

Similarly, Aviani fails to disclose or suggest “maintaining a mapping of each different type of service to an IP address, thereby enabling the service request to be processed via an IP address associated with a type of service identified in a first one of the plurality of packets to be received.” While Aviani discloses binding the IP address to the domain name, Aviani fails to disclose or suggest maintaining a mapping of each different type of service to an IP address. Accordingly, Applicant respectfully submits that claims 1, and 6-8 are patentable over Aviani.

Claim 9 recites, in part, a network device adapted for processing a DNS request, which is adapted for:

receiving a DNS request indicating a domain name for which an IP address is requested; and

transmitting a plurality of DNS responses in response to the DNS request, each of the plurality of DNS responses being transmitted via a different path associated with a different type of service, wherein the type of service identifies or is mapped to a service provider.

Aviani neither discloses nor suggests a single network device transmitting a plurality of DNS responses in response to the DNS request, each of the plurality of DNS responses being transmitted via a different path associated with a different type of service, wherein the type of service identifies or is mapped to a service provider. The Examiner merely cites claim 1 and FIG. 2 of Aviani, stating that the client servers send responses to the client device. Applicant agrees with this assertion that multiple client servers send responses. It follows that Aviani does not disclose a single device transmitting a plurality of DNS responses in response to a DNS request.

It is important to note that FIG. 2 shows a BOOM server sending packets to a plurality of clients. However, the BOOM server merely transmits a copy of the DNS request to the clients. More particularly, Aviani recites “the BOOM server 220 does not automatically resolve the DNS record request, but rather forwards or shunts the dns record request to selected BOOM client servers in the overlay network.” See col. 7, lines 14-22. The BOOM server does not send a plurality of DNS responses in response to the DNS request. Rather, each separate client server generates and sends a spoofed DNS response. See col. 8, lines 20-40.

With respect to claim 1 of Aviani cited by the Examiner in this rejection, claim 1 specifically recites “causing each of the first portion of client servers to transmit, substantially the same time, a respective spoofed response to the client device, wherein each spoofed response is generated using information from the first packet.” In other words, the responses are generated and transmitted by the client servers. Accordingly, Aviani fails to disclose a single device transmitting a plurality of DNS responses in response to a DNS request.

Moreover, as set forth above, Aviani says nothing about service providers, or transmitting DNS responses via a different path associated with a different type of service, where the type of service identifies or is mapped to a service provider. As such, Aviani fails to disclose or suggest “transmitting a plurality of DNS responses in response to the DNS request, each of the plurality of DNS responses being transmitted via a different path associated with a different type of service, wherein the type of service identifies or is mapped to a service provider.” Accordingly, Applicant respectfully submits that claims 9 and 23-25 are patentable over Aviani.

Claim 27 recites a network device adapted for:

receiving a TCP connection request from a client;

sending a plurality of TCP acknowledgement packets to the client via a plurality of paths, each of the plurality of paths corresponding to a type of service, wherein the type of service indicates a service provider;

receiving an acknowledgment message from the client that indicates receipt of one of the plurality of TCP acknowledgement packets sent by the network device;

ascertaining the type of service via which the TCP acknowledgement packet received by the client was transmitted; and

providing an HTTP redirect to an IP address directly corresponding to the service provider indicated by the type of service.

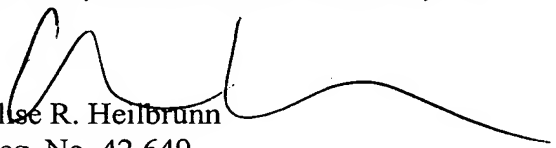
Aviani does disclose that different protocols such as DNS and TCP may be used. However, Aviani fails to disclose or suggest a single network device sending a plurality of TCP acknowledgement packets, as claimed. In fact, the Examiner cites col. 8, line 66-col. 9, line 4 of Aviani, which requires that each of the selected BOOM client servers transmits its respective response. Accordingly, Aviani fails to disclose a single network device “sending a plurality of TCP acknowledgement packets to the client via a plurality of paths, each of the plurality of paths corresponding to a type of service, wherein the type of service indicates a service provider.”

In addition, Aviani fails to disclose or suggest ascertaining the type of service via which the TCP acknowledgement packet received by the client was transmitted and providing an HTTP redirect to an IP address directly corresponding to the service provider indicated by the type of service. Rather, the Examiner cited col. 9, lines 28-47, which merely indicates that the IP address of the successful BOOM client server is bound to the domain name corresponding to the host. Aviani says nothing about service providers. Accordingly, Applicant respectfully submits that Aviani fails to anticipate claims 27 and 39-41.

Based on the foregoing, it is submitted that the remaining independent claims are also patentable over the cited references. In addition, it is submitted that the dependent claims are also patentable for at least the same reasons. The limitations recited in the independent claims or the dependent claims are not further discussed as the above-discussed reasons are clearly sufficient to distinguish the pending claims from the cited art. Thus, it is respectfully submitted that Aviani fails to anticipate the pending claims.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. CISC199).

Respectfully submitted,  
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